

13-1244

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

**THE ESTATE OF HELEN GRAHAM
by EXECUTOR PATRICK GRAHAM,**

Plaintiff,

v.

**Civil Action No: 10-C-879-H
Honorable John A. Hutchison**

**RALEIGH GENERAL HOSPITAL, LLC
and JOHN OR JANE DOE,**

Defendants.

**ORDER REGARDING DISTRIBUTION OF WRONGFUL DEATH
SETTLEMENT PROCEEDS**

This matter came before the Court on the 18th day of June, 2013, and on the 19th day of August, 2013, for a hearing on the distribution of wrongful death settlement proceeds. The Plaintiff appeared by counsel, Paul M. Stroebel; Robert Asbury and the Estate of Betty Asbury appeared by counsel, Pamela A. Lambert; and the beneficiaries of the Estate of Helen Graham appeared by counsel, Christopher M. Davis.

The Court has considered the evidence presented, heard the arguments of counsel, and reviewed the entire record and pertinent legal authorities. As a result of these deliberations, the Court has concluded that the Estate of Betty Asbury is entitled to an equal share of the settlement proceeds, and the funds shall be distributed accordingly.

FINDINGS OF FACT

1. The initial Complaint in this matter was filed on September 30, 2010, and alleged that the negligent and/or reckless conduct of the Defendants caused injuries that led to the death

of Helen Graham on March 19, 2010. After much litigation, the parties eventually reached a settlement agreement, and a Petition for Approval of Settlement was filed. On July 23, 2012, this Court entered a Final Order in this matter, which divided the proceeds of the settlement equally among six (6) of the decedent's seven (7) children following the payment of attorney's fees and other expenses.

2. On September 28, 2012, Robert Asbury, as administrator of the Estate of Betty Asbury, filed a Motion to Set Aside Settlement as Invalid or in the Alternative Motion Seeking Court Ordered Distribution of Wrongful Death Proceeds Pursuant to West Virginia Code § 55-7-6. Defendant Raleigh General Hospital filed a Response to the Motion on October 1, 2012, and the Plaintiff filed its Response on February 21, 2013.

3. A hearing on the Motion to Set Aside Settlement was held in this Court on February 22, 2013. At the conclusion of the arguments, the Court took the matter under advisement and ordered counsel to provide supplemental memoranda. The Court issued a letter dated March 26, 2013, directing counsel to prepare an order containing the Court's findings and conclusions. On May 17, the Court entered the Order Granting the Alternative Motion for Distribution of the Wrongful Death Settlement and Denying the Motion to Set Aside Settlement. A hearing on the distribution of the wrongful death settlement proceeds was held on June 18, 2013.

4. At the hearing, counsel for the Estate of Betty Asbury called Robert Asbury as her sole witness. Counsel for the beneficiaries of the Estate of Helen Graham indicated that he anticipated calling several witnesses in rebuttal. Due to the Court's schedule, the hearing was continued to August 19, 2013, at which time no further evidence was placed upon the record. The Court indicated that it would issue a ruling on distribution of the settlement proceeds.

5. Robert Asbury and the Estate of Betty Asbury argue that this Court ruled that Robert Asbury did not receive proper notice during the wrongful death settlement proceeding, and that the Estate of Betty Asbury should have been entitled to receive a share of the proceeds, as Betty Asbury was a daughter of Helen Graham and passed away on December 11, 2010, several months after the death of Helen Graham on March 19, 2010.

6. The beneficiaries of the Estate of Helen Graham contend that the distribution of the settlement proceeds was fair, and that because Betty Asbury passed away and her estate had been closed prior to the distribution, the applicable statute prohibits her estate from receiving a share of the proceeds.

CONCLUSIONS OF LAW

1. West Virginia Code § 55-7-6(b) provides, in pertinent part:

In every such action for wrongful death, the jury, or in a case tried without a jury, the court, may award such damages as to it may seem fair and just, and, may direct in what proportions the damages shall be distributed to the surviving spouse and children, including adopted children and stepchildren, brothers, sisters, parents and any persons who were financially dependent upon the decedent at the time of his or her death or would otherwise be equitably entitled to share in such distribution after making provision for those expenditures, if any, specified in subdivision (2), subsection (c) of this section.

2. The Court finds that pursuant to the above statute, the argument of the beneficiaries of the Estate of Helen Graham that the Estate of Betty Asbury was precluded from receiving a share of the wrongful death settlement proceeds due to her death prior to the actual distribution is without merit. The statute clearly provides that the court may distribute the damages to the surviving children, and this Court is aware of no West Virginia law which would require an heir to survive to the date of resolution of outside claims against the decedent's estate in order to receive a share of those damages. It is undisputed that Betty Asbury, who died on

December 11, 2010, survived her mother, Helen Graham, who died on March 19, 2010. Further, the unrefuted evidence before this Court is that Betty Asbury enjoyed a substantial and significant relationship with her mother, Helen Graham, which was equal to or exceeded the relationships of the decedent's other children, who each received an equal share of the wrongful death settlement proceeds.

3. This Court previously held that Robert Asbury, as heir and administrator of the Estate of Betty Asbury, was entitled to notice of his right to appear and make a claim for a portion of the wrongful death settlement proceeds. The Court now finds that based upon the statute and the evidence presented, Betty Asbury was a surviving child of the decedent, Helen Graham, and the Estate of Betty Asbury is entitled to share in the settlement proceeds. Because the other surviving children of Helen Graham each received an equal portion of the proceeds, the Court finds that the proceeds should now be distributed to include the Estate of Helen Graham, so that the proceeds are divided into seven (7) equal portions, one for each surviving child or his or her estate. The Court finds that this distribution is fair, just and equitable, and that the appropriate portion of the funds shall be distributed to Robert Asbury, as administrator of the Estate of Betty Asbury, as soon as possible.

It is therefore **ADJUDGED** and **ORDERED**:

1. That the proceeds of the wrongful death settlement in this matter shall be **DISTRIBUTED** in accordance with the provisions in this Order.
2. That the exceptions and objections of all parties to the Court's ruling are noted for the record.
3. That the Circuit Clerk shall provide certified copies of this Order to:

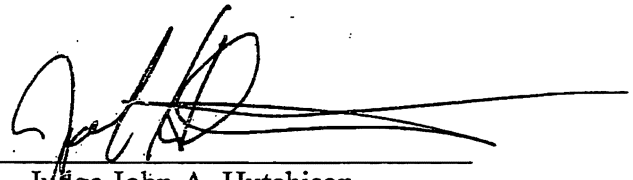
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Entered on the 21st day of Oct, 2013.



Judge John A. Hutchison
Tenth Judicial Circuit

The foregoing is a true copy of an order
entered in this office on the 21 day
of Oct, 2013.

PAUL H. FLANAGAN, Circuit Clerk of
Raleigh County, West Virginia

By: aw
Deputy

Remove From Docket
By Order Of JAH

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